IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Suit No.1103 of 1983

Prakash Cotton Mills Pvt. Ltd. ..Plaintiffs

V/s

The New India Assurance Co. Ltd. ..Defendants

Mrs.U.G.Wagle for Plaintiff

Mrs Aarti Barve for Defendant

CORAM:S.R.SATHE,J.

DATED:17th November 2005

ORAL JUDGMETN :-

1. The plaintiffs have filed this suit against the New India Assurance Company for recovery of amount of Rs.2,29,213-95 ps. and future interest.

2. The brief facts giving rise to this suit are as under :

. Plaintiffs have a textile mill situated at off Lower Parel, Bombay. As per request of the plaintiffs defendants the defendants had issued a fire policy No.11912254 for the period from 1-7-1979 to 1-7-1980 in

favour of plaintiffs. The said policy was a comprehensive policy and insurance coverage provided by the defendants was for all buildings and structure, machineries, assessories, all stocks including cotton bales, other material in trade of every description manufactured, all the goods in process of manufacture including stores of all kinds lying in the godown as well as in the departments. According to the plaintiffs the said insurance was taken by the plaintiffs on the basis of maximum stock from time to time. The total value declared for insurance under policy was as per specification attached to the policy and was in the sum of Rs.2,33,90.150/-. According to the plaintiffs whenever any raw material was stored in excess of average calculated or finished products in excess of average quantity then the defendants were paid additional premium from time to time, in view of comprehensive insurance coverage provided by the defendants.

3. It is plaintiffs case that on 26-12-1979 the defendants representative visited the plaintiffs premises and was informed that cotton bales worth Rs.6,50,000/- would arrive in next 3/4 days and that they will store the same in godown no.8 situated in the compound of plaintiffs' mill or Jalan Industrial Mill compound. The defendants informed that plaintiffs are required to pay additional premium in respect of the said cotton bales and the said premium was to the tune of Rs.1235/-. Plaintiffs agreed to pay the said premium and informed

the defendants by their letter dated 26-12-1979 bearing No.807/F/IN(2) to cover these bales with effect from 31-11-1979. The said letter was however not despatched until 4-1-1980. However, unfortunately on 3-1-1980 there was a fire in the compound of the plaintiffs mill where the godown no.8 was situated and as a result of the said fire the fully processed cotton bales insured for the value of Rs.6,50,000/- were seriously damaged. The plaintiffs immediately informed the defendants about the fire. Plaintiffs had sent along with the letter dated 31-12-1979 a cheque of Rs.1235/- towards premium. The defendants admitted the receipt of letter dated 4-1-1980 and by their letter dated 4-1-1980 informed the plaintiffs that they have appointed M/s Mehta and Padamsi Pvt. Ltd. for survey of damage on account of fire. According to the plaintiffs the surveyor assessed the damage to the extent of Rs.2,18,056-74. The plaintiffs thereafter wrote several letters to the defendant and requested the defendants to settle and pay to the plaintiffs a sum of Rs.2,15,878-39 ps. together with interest. In spite of repeated demands the defendants did not pay the said amount, hence plaintiffs filed the present suit and claimed an amount of Rs.3,29,213-95 with further interest on Rs.215878-39 ps. at the rate of 18% p.a. from the date of the suit till payment or realisation.

4. Though the defendants were served they failed to file written statement. One Mr.Jalan, executive of the

plaintiffs mill filed affidavit of evidence and it was called for exparte decree on 29-8-2005. However, thereafter it was adjourned for 3 weeks.

5. In this suit the averments in the plaint have in a way gone unchallenged, inasmuch as defendants have not filed written statement. Plaintiffs witness Jalan has stated in his affidavit that plaintiffs had taken fire policy bearing No.11912251 for the period from 1-7-1979 to 1-7-1980 and the total value declared for insurance was to the tune of Rs.2,33,90,150/-. He has also stated that cotton bales of the value of Rs.6,50,000/- which were brought in the plaintiffs premises after 26-12-1979 were covered by the policy in question and defendants had accepted insurance of the same. According to him as per instructions of the defendants plaintiffs had sent letter dated 31-12-1979 along with cheque of Rs.1235/-. However, the said letter was not despatched until 4-1-1980. He has stated that though actual amount of Rs.1235/- was not paid by way of premium the defendants had accepted the insurance about cotton bales in question and as such the defendants are liable to pay the amount claimed by the plaintiffs as the bales in question were damaged in fire which took place on 31-1-1980.

6. At the outset it must be mentioned that merely because defendants have not filed written statement court is not bound to pass a decree in favour of the plaintiffs, merely on the basis of the averments in the

plaint. Ultimately,it is necessary to find out whether the plaintiffs have in fact proved their claim against the defendants. It is not in dispute that the plaintiffs had taken comprehensive insurance policy bearing No.11912251 and it was valued for the period 1-7-1979 to 1-7-1980 and it was for the total value of Rs.2,33,90,150/- as per specification attached to the policy. From the plaintiffs own pleadings it is quite evident that the said coverage was only in respect of stock in whatever form lying in the premises of the plaintiffs mill but upto a particular limit. Whenever there used to be more stock than the limit under policy it was necessary for the plaintiffs to secure additional coverage or policy for the said stock by paying separate or additional premium for the same so as to have risk coverage about the said property.

7. It is an admitted fact that the claim that is being made by the plaintiff in the present suit is only in respect of cotton bales stored in godown no.8 which got damaged due to fire. As per plaintiffs own evidence and in particular from the letter dated 31-12-1979 which is at Exh.B it is clear that the plaintiffs had not taken insurance for the said cotton bales i.e. the property in question as per the then existing policy. It would be worthwhile to see the language used by the plaintiffs in their letter dated 31-12-1979. It is mentioned in the letter :

"Sub: Issue of fresh policy for cotton in F.P.Bales only -value Rs.6,50,000/- Godown NO.8 lying in Jalan Industrial Estate compound.

This is to inform you to take the cover for cotton in F.P. Bales only, insured value Rs.6,50,000/- godown No.8 lying in Jalan Ind. Estate compound with effect from 31-12-1979.

We are enclosing herewith our cheque No.CHT/K/H/38063 on Central Bank of India, Bombay dated 31-12-1979 for the premium of Rs.1235/-.

Kindly send us the policy at the earliest.We hope you will do the needful in the matter".

8. The bare reading of this letter shows that by this letter the plaintiffs had in fact requested the defendants to take the cover for the said cotton bales stored in godown no.8 and to accept premium of Rs.1235/-. So, this letter itself shows that there is no substance in the plaintiffs case and in the argument advanced by the learned Advocate for the plaintiffs that cotton bales in question stored in godown no.8 were already covered by policy which was already taken and for which premium was already paid. If really the goods in question would have been covered by the then existing policy there was no need for the plaintiffs to request the defendants to take the cover for the said cotton bales and to pay additional

premium. A feeble attempt is made on behalf of the plaintiffs to show that representative of defendants visited the plaintiffs premises on 26-12-1979 and agreed to cover the cotton bales that would be received by plaintiffs during next 3-4 days. Firstly, it must be mentioned that allegations in this behalf made by the plaintiffs are very vague. If really some representative of the defendants had actually visited and agreed as suggested by the plaintiffs then certainly plaintiffs would have mentioned the specific name of the said person in their pleadings and the future correspondence, but we find that plaintiffs have not at all specifically stated the name of the person who had visited the premises as alleged by the plaintiffs and agreed to give coverage for the cotton bales which were to be stored by the plaintiffs in godown no.8.

9. Merely because at the request of the plaintiffs the defendants had initially appointed valuer that does not mean that they had agreed that the property in question was covered by the insurance policy.

10. In fact it is really very difficult to belive that any responsible officer of the defendants insurance company would agree to give such coverage in respect of the property which was in fact not actually received by the plaintiffs. So, I am not at all inclined to accept the plaintiffs version in this behalf that the defendants representative had agreed to give coverage for the cotton

bales in question.

11. Admittedly, the goods in question got damaged in fire which took place on 3-1-1980 and on that day the defendants insurance company had not accepted the insurance for the said cotton bales and they had also not received the additional premium. No documents of insurance were prepared between the parties. Naturally, it cannot be said that the defendants insurance company is liable to pay any damage to the plaintiffs. Incidently it must be noted that even in policy document which is produced by the plaintiff it is mentioned :

> "The company agrees (subject to the conditions contained herein or endorsed or otherwise expressed hereon which conditions shall so far as the nature of them respectively will permit be deemed to be conditions precedent to the right of the Insured to recover hereunder) that if after payment of the premium the Property Insured described in the said Schedule, or any part of such property be destroyed or damaged by"

From this also it is very clear that the insured would get right to recover the damages only if he has paid the premium in respect of the property covered by the policy. Even the learned Advocate for the defendants also conceded that as per statutory provisions insured gets the right to recover the damages or amount of insurance

policy only if the premium is paid.

13. Thus from the above discussion it is very clear that the plaintiffs had in fact not taken the valid insurance policy in respect of the cotton bales in question stored in godown no.8 of the plaintiffs premises and there was no insurance coverage for the same. The plaintiffs had also not even paid premium for having such insurance coverage, when the goods got damaged in fire. So plaintiffs have failed to prove that defendants are liable to pay the amount as claimed in the suit.

14. Normally the cost must fall the event. However, having regard to the peculiar facts of this suit and the fact that the defendants failed to file written statement I am not inclined to grant cost. Plaintiffs' suit stands dismissed. No order as to costs.

(S.R.SATHE,J.)

P.C.:-

. For the reasons recorded separately in the Oral Judgment the Court passes the following order:

. The plaintiffs' suit stands dismissed. No order as to costs.

(S.R.SATHE,J.)